

### **REMARKS**

In the Office Action dated September 25, 2008 and during a phone call on October 22, 2008, which Applicants appreciate, the Examiner maintains that to correct a sequence a showing or explanation of 1) how the error was discovered and 2) how was the resequencing accomplished is required under *Ex parte Maizel*, 27 USPQ2d 1662 (Bd. Pat. App. & Int. 1992).

In response to the Examiner's remaining questions, the errors in the sequence listings of the pending application were discovered when a new attorney began working on the application, supported by the change in power of attorney in the record, and the sequence was subsequently investigated and an amendment filed. No resequencing was performed because there was no sequencing error. The error was only in the sequence listing of the patent application, as indicated by the GenBank report attached to Applicants' previous response dated June 13, 2008. The correct sequences were submitted to GenBank on February 1, 1999, about 7 months prior to the priority date of the current application, thus showing that Applicants were in possession of the sequence at the time of filing.

### **Conclusion**


Applicants respectfully submit that the application and claims are in condition for allowance. Accordingly, reconsideration is respectfully requested.

Applicants would appreciate the courtesy of a telephone call should the Examiner have any questions or comments with respect to this response for purposes of efficiently resolving same.

Serial No. 09/676,380  
Response dated November, 2008  
In Response to Office Action dated September 25, 2008

The Commissioner is hereby authorized to charge Deposit Account No. 03-2026 for any fees associated with this Response.

Respectfully submitted,

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